

## 1 SENATE BILL NO. 429

2 INTRODUCED BY A. WITTICH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS ON REINSTATEMENT OF A LIMITED LIABILITY  
 5 COMPANY FOLLOWING ADMINISTRATIVE DISSOLUTION; ~~AUTHORIZING A REINSTATEMENT FEE;~~  
 6 AMENDING SECTION 35-8-912, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE DATES AND A  
 7 TERMINATION DATE."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 35-8-912, MCA, is amended to read:

12 **"35-8-912. Reinstatement following administrative dissolution.** (1) A limited liability company  
 13 administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective  
 14 date of dissolution. The applicant shall file an official application. The application must:

15 (a) recite the name of the company and the effective date of its administrative dissolution;

16 (b) state that the ground for dissolution either did not exist or has been eliminated;

17 (c) state that the company's name satisfies the requirements of 35-8-103;

18 (d) contain a certificate from the department of revenue reciting that all taxes owed by the company have  
 19 been paid unless a limited liability company has only one member and has not elected to be taxed as a  
 20 corporation; and

21 (e) include all annual reports not yet filed with the secretary of state.

22 (2) If the secretary of state determines that the application contains the information required by  
 23 subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution,  
 24 prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file  
 25 the original of the certificate, and serve the company with a copy of the certificate.

26 (3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the  
 27 administrative dissolution, and the company may resume its business as if the administrative dissolution had not  
 28 occurred.

29 ~~(4) Pursuant to 2-15-405, the secretary of state may charge a fee for preparation of a certificate of~~  
 30 reinstatement."

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**SECTION 2. SECTION 35-8-912, MCA, IS AMENDED TO READ:**

**"35-8-912. Reinstatement following administrative dissolution.** (1) A limited liability company administratively dissolved under the provisions of 35-8-209 may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution to restore its right to carry on business in this state and to exercise all its privileges and immunities. ~~The applicant shall file an official application. The application must A~~ limited liability company applying for reinstatement shall submit to the secretary of state an official application, executed by a person who was a member or manager at the time of dissolution, setting forth:

- ~~(a) recite the name of the company and the effective date of its administrative dissolution;~~
- ~~(b) state that the ground for dissolution either did not exist or has been eliminated;~~
- ~~(c) state that the company's name satisfies the requirements of 35-8-103;~~
- ~~(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and~~
- ~~(e) include all annual reports not yet filed with the secretary of state.~~
- (a) the name and business mailing address of the limited liability company;
- (b) a statement that the assets of the limited liability company have not been liquidated;
- (c) a statement that a majority of its members have authorized the application for reinstatement; and
- (d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(2) The limited liability company shall submit with its application for reinstatement:

- (a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid unless a limited liability company has only one member and has not elected to be taxed as a corporation; and
- (b) all annual reports not yet filed with the secretary of state.

~~(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.~~

~~(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not~~

1 occurred.

2 (3) When all requirements of subsections (1) and (2) are met and the secretary of state reinstates the  
3 limited liability company, the secretary of state shall:

4 (a) conform and file in the office of the secretary of state reports, statements, and other instruments  
5 submitted for reinstatement;

6 (b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement  
7 authorizing it to transact business; and

8 (c) upon demand and receipt of the specified fee, issue to the limited liability company one or more  
9 certified copies of the certificate of reinstatement.

10 (4) The secretary of state may not order a reinstatement if 5 years have elapsed since the date of  
11 dissolution.

12 (5) A restoration of limited liability company rights pursuant to this section relates back to the date the  
13 limited liability company was administratively dissolved, and the limited liability company is considered to have  
14 been an existing legal entity from the date of its original organization."

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16 COORDINATION SECTION. SECTION 3. COORDINATION INSTRUCTION. IF SENATE BILL NO. 63 AND [THIS  
17 ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 18 OF SENATE BILL NO. 63] AMENDING 35-8-912 IS VOID.

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19 NEW SECTION. Section 4. Effective date DATES. [~~This act~~] (1) EXCEPT AS PROVIDED IN SUBSECTION (2),  
20 [THIS ACT] is effective on passage and approval.

21 (2) [SECTION 2] IS EFFECTIVE OCTOBER 1, 2011.

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23 NEW SECTION. SECTION 5. TERMINATION. [SECTION 1] TERMINATES SEPTEMBER 30, 2011.

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